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7 UNITED STATES DISTRICT COURT FOR THE  
8 WESTERN DISTRICT OF PENNSYLVANIA

9 DARREN BEASON, )

10 *Petitioner* )

11 v. )

12 )  
13 ATTORNEY GENERAL, et al., )

14 *Respondents.* )  
15

CA. NO. 16-297 Erie

16 **ORDER ADOPTING REPORT AND RECOMMENDATION**

17 Before the Court is the Report and Recommendation of the Honorable Susan P. Baxter,  
18 United States Magistrate Judge. Dkt. No. 11. Magistrate Judge Baxter recommends that this Court  
19 dismiss Petitioner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 as time-  
20 barred. Dkt. No. 14. Petitioner timely filed Objections to the Report and Recommendation. Dkt.  
21 No. 14. Having reviewed the Report and Recommendation, the Objections thereto, the record of  
22 this case, as well as the relevant legal authority, the Court hereby finds and concludes as follows:

24 (1) On May 23, 2012, Petitioner was convicted in the Court of Common Pleas of Erie  
25 County of one count of delivery of cocaine;

(2) On July 12, 2012, Petitioner was sentenced to a term of 15 to 30 months

imprisonment, followed by 60 months of probation;

(3) On October 17, 2013, the Superior Court of Pennsylvania affirmed his sentence;

(4) On May 28, 2014, the Pennsylvania Supreme Court denied his petition for allowance of appeal. Therefore, Petitioner's sentence became final on August 26, 2014;

(5) Petitioner filed the instant petition on January 12, 2017, well after the one-year statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") expired;

(6) Magistrate Judge Baxter reviewed the petition, noted its untimeliness, and provided Petitioner with an opportunity to show cause why the petition should not be summarily dismissed. Dkt. No. 8. Petitioner responded to the order to show cause on June 12, 2017. Dkt. No. 9. Magistrate Judge Baxter reviewed the response and concluded that Petitioner failed to demonstrate that he is entitled to equitable tolling of the AEDPA statute of limitations and, therefore, issued the instant Report and Recommendation, recommending that this Court dismiss the petition for writ of habeas corpus.

(7) This Court has reviewed Petitioner's response to the show cause order, as well as his Objections to the Report and Recommendation, and the Court agrees that Petitioner has failed to demonstrate extraordinary circumstances or that he acted diligently with respect to filing his petition. Therefore, equitable tolling of the statute of limitations is not warranted in this case;

(8) Petitioner attaches an "affidavit" to his Objections to the Report and Recommendation, claiming that the document constitutes "newly discovered

evidence” that he did not commit the crime of which he is convicted [Dkt. No. 14, last page];

(9) The document states in its entirety: “Darren Beason did not make a sale out of the vehicle of [illegible] on Oct 19 of 2010 on 9<sup>th</sup> a [illegible] at 12:08 pm.” The signature on the document is illegible;

(10) The Court is unable to ascertain from this document who made the statement, whether the statement is based on personal knowledge, or whether the statement is made by someone competent to testify on the matters stated. Nor is the statement made under oath. Accordingly, the document does not constitute competent, reliable evidence. *See, e.g.*, 3 Am. Jur. 2d Affidavits § 20 (current through 2017) (“To be legally sufficient, the affidavit should show affirmatively the affiant’s competence to testify to the facts stated, and the allegation must directly and unequivocally represent that the facts are true and within the personal knowledge of the affiant. Affidavits that merely state conclusions rather than facts are insufficient.”); F.R.C.P. 56(c)(4);

(11) Thus, the Report and Recommendation is HEREBY GRANTED;

(12) Petitioner’s petition for writ of habeas corpus is DISMISSED; and

(13) The Clerk of the Court is respectfully directed to send copies of this Order to Petitioner and Magistrate Judge Baxter.

**IT IS SO ORDERED.**

DATED this 12th day of October, 2017.

A handwritten signature in cursive script, reading "Barbara J. Rothstein".

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BARBARA J. ROTHSTEIN  
UNITED STATES DISTRICT JUDGE